

appropriate measure for assessing the quality of SWBT's provisional efforts.<sup>75</sup> SWBT's reported performance data under measure 59 for 8 db loops -- the most frequently installed type of loop -- demonstrates that SWBT's loop provisioning from August through October has been consistently poor. The aggregate data reported by SWBT under measure 59 for all CLECs shows the following level of trouble reported on newly installed and migrated UNE loops:<sup>76</sup>

<u>Month</u>	<u>% Trouble Reported</u>	<u>Volume of Installed Circuits</u>
August	2.6%	5,786
September	4.2%	5,626
October	4.8%	4,452

123. Thus, SWBT's own reported data demonstrates that, in the face of falling volumes, SWBT provided increasingly poor loop provisioning -- and consistently worse performance than Bell Atlantic. Moreover, SWBT's reported performance data for AT&T -- who, during this period, primarily ordered UNE loops installed through CHC hot cuts -- shows an even worse trend in the poor quality of SWBT's loop provisioning.

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<sup>75</sup> See Performance Measure 59 business rules. [Dysart Aff., Attach. A] It is important to note that measure 59 addresses loops installed on a stand-alone basis -- not loops ordered as part of a UNE platform. Trouble reported on newly installed UNE platform loops are addressed in measure 35. Like Bell Atlantic, SWBT measures trouble reports under measure 59 on a circuit (i.e., line) basis. Bell Atlantic ¶ 300 n.955.

<sup>76</sup> See SWBT reported performance measure data, measure 59-01, Dysart Aff., Attach. B. The figures reported in the above table are an aggregation of the geographically disaggregated performance data reported under measure 59-01. In other words, I have simply combined the reported data under measure 59-01 which SWBT separately reported for each of the 4 geographic regions.

Specifically, SWBT's reported performance data for AT&T under measure 59 for 8 db loops shows:<sup>77</sup>

<u>Month</u>	<u>% Trouble Reported</u>	<u>Volume of Installed Circuits</u>
August	1.4%	XXXXXXXX
September	4.1%	XXXXXXXX
October	9.5%	XXXXXXXX

124. Furthermore, AT&T has found that the overwhelming majority of the trouble reported on newly installed loops occurred within the first seven days of installation. Thus, based on an analysis of SWBT's raw performance data for October,<sup>78</sup> it appears that 71% of all the trouble reports on AT&T's UNE loops -- out of the total 9.5% reported -- occurred within the first 7 days of installation.<sup>79</sup>

125. In sum, not only does SWBT's reported data show an unacceptably high level of trouble reports within the first thirty days of installation -- which the

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<sup>77</sup> SWBT's reported performance data for AT&T under measure 59 (which is separately reported by SWBT for AT&T's subsidiary TCG) is attached hereto as Attachment 19. Like the table presented above for all CLECs' performance data, the figures for AT&T are an aggregation of the data SWBT separately reported for the Houston and Dallas/Ft. Worth areas -- the only two areas for which SWBT reported any relevant performance data for TCG.

<sup>78</sup> AT&T's analysis of SWBT's raw data is attached hereto as Attachment 20. The analysis is based on raw data SWBT provided for its measure 65 (percent of trouble reports per month) rather than measure 59 because the raw data supporting measure 59 (which AT&T also obtained from SWBT) lacked sufficient informational fields to calculate the number of trouble reports received by SWBT in the first 7 days after installation. Unfortunately, due to delays by SWBT in providing raw data, AT&T has not yet obtained the raw data for August and September in order to perform an analysis similar to the one it performed in October. However, for the reasons discussed further below, it is reasonable to assume that, like October, the overwhelming number of trouble reports captured in measure 59 in August and September were filed within the first week after installation.

<sup>79</sup> That 71% figure means that, for October, 7% of all loops installed within 30 days reported trouble within the first 7 days of installation -- a figure substantially higher than the .34% to 1.26% trouble report rate Bell Atlantic's hot cut provisioning experienced and far above the 2% trouble report rate that the Commission has found "minimally acceptable." Bell Atlantic ¶ 300 n.956.

Commission has indicated is “indicative of the quality of network components supplied by the incumbent LEC” Bell Atlantic ¶ 222 n. 711 -- but SWBT’s raw data also shows, not surprisingly, that the majority of trouble reported occurred within the first week after installation and thus provides further confirmation of the extremely poor quality of SWBT’s hot cut provisioning performance.<sup>80</sup>

126. Notably, in his affidavit discussing performance measure 59, Mr. Dysart completely ignores the high level of trouble reported on newly installed UNE loops. Instead, he attempts to account -- using internal, undisclosed SWBT data -- for the fact that SWBT’s reported performance data shows that SWBT failed to provide parity performance to CLECs -- i.e., SWBT’s data showed that CLECs experienced far more

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<sup>80</sup> Moreover, the trend in SWBT’s poor provisioning of hot cuts -- as reflected in measure 59 -- has continued after October. Thus, in November, SWBT reported for AT&T (on an aggregate basis) a 3.5% trouble report rate under measure 59 and, in December, the trouble report rate rocketed to 9.9%. See Attachment 19. Moreover, AT&T’s analysis of SWBT’s raw data supporting its November report (similar to the analysis AT&T performed for SWBT’s October performance data) shows that 79% of the total number of trouble reports filed in November -- i.e., 3% of all loops installed within 30 days -- were filed within the first 7 days of installation. (AT&T’s analysis of the November trouble reports is attached hereto as Attachment 21.) Unfortunately, AT&T has not yet obtained the raw data supporting SWBT’s published trouble report rate for December. However, given the fact that SWBT’s raw data showed that at least 70% of the total trouble reports reflected in SWBT’s October and November performance data were filed within the first 7 days of installation, it is reasonable to assume that the same rate would apply in December -- and likely also applied in August and September.

While the continuing high trouble report rate of 3.5% and 9.9% in November and December, respectively, is sufficient -- as determined by the TPUC and recognized by the Commission -- to demonstrate the poor quality of SWBT’s hot cut provisioning, the fact that, in November, 3% of all loops installed within 30 days (and most likely, for December, 6.9% of all loops installed within 30 days, assuming SWBT’s prior trend continued) experienced trouble within the first 7 days after installation confirms that SWBT is not capable of performing loop cutovers in an accurate and reliable manner.

trouble reports on newly installed and migrated UNE loops in October than did SWBT.  
(See Dysart Aff. ¶ 362-65.<sup>81</sup>)

127. As the Commission has made clear, however, “parity” -- at least in the sense of comparing trouble reported on SWBT’s own loops against trouble reported on CLECs’ loops -- is not the issue. The question is whether SWBT is providing CLECs with a meaningful opportunity to compete by provisioning UNE Loop hot cuts “at an acceptable level of quality”.<sup>82</sup> SWBT’s own reported performance data -- which consistently shows in excess of 2% trouble reports on newly installed and migrated loops -- proves that SWBT’s provisioning efforts fail to meet even a “minimally acceptable” level of performance and thus demonstrates that SWBT has not complied with its statutory obligations.<sup>83</sup>

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<sup>81</sup> Notably, while Mr. Dysart addresses the discriminatory performance SWBT provided in October in the Houston and Central Texas regions, he ignores the discriminatory performance SWBT also reported under measure 59-01 in October for the Dallas/Ft. Worth area.

<sup>82</sup> As in Bell Atlantic, there is no question here that SWBT’s provisioning of UNE loop hot cuts should be addressed under the Commission’s “meaningful opportunity to compete” standard because there presently are no meaningful retail analogues to SWBT’s performance of a hot cut. Indeed, the TPUC acknowledged that fact by adopting benchmark measures for the two performance measures relating specifically to CHC hot cuts -- i.e., measures 114 and 115. See Final Staff Status Report on Collaborative Process, dated November 18, 1998, filed in TPUC Project No. 16251 (“Final Staff Report”) at 149 (“Staff finds that establishing benchmarks for this measure is appropriate because there is no equivalent measure for SWBT for coordinated cutovers.”)[SWBT App. C at Tab 1233].

<sup>83</sup> Moreover, despite Mr. Dysart’s attempt to account for SWBT’s discriminatory provisioning, his own explanations (although vaguely couched) suggest that the “root cause” of the high trouble report rate was due to SWBT’s poor provisioning. For example, Mr. Dysart explains that many of the reported loop troubles were due to the fact that “either a jumper was missing or a cable pair had been cut” or were otherwise caused by “wiring problems” (Dysart Aff. ¶ 363) -- the very sort of systemic provisioning errors determined by the PPIG task force to be responsible for the SWBT caused service outages affecting AT&T’s hot cut orders. Mr. Dysart also attributes a large percentage of the trouble reports to “central office codes” (id.), which include (according to SWBT’s trouble code definitions) troubles stemming from “frame activity” -- i.e., a euphemism for poor wiring.

3. **SWBT consistently fails to complete coordinated hot cuts on a timely basis.**

128. As the Department of Justice has observed, “[r]eliable performance in completing hot cuts correctly and at the time scheduled is extremely important because of the risk to the customer of losing dial tone for more than a brief period.”<sup>84</sup> In Bell Atlantic, the Commission determined that “demonstrated on-time hot cut performance at rates at or above 90 percent” constituted a “minimally acceptable” level of checklist compliance. Bell Atlantic ¶ 309. The CHC cutover interval data that SWBT has submitted in support of its application -- while lacking any validation and substantially overstating SWBT’s on-time performance -- nevertheless shows that SWBT has consistently failed to meet the 90% standard set by the Commission and thus establishes that SWBT cannot provision CHC hot cuts on a timely basis.

129. The absence of validated, systematically collected cutover interval data is not due to any fault on the part of CLECs. Until the eve of its present filing, SWBT consistently resisted adopting an appropriate cutover interval measure, despite numerous requests by CLECs.<sup>85</sup> CLECs’ demand for such a measure was prompted by

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<sup>84</sup> Evaluation of the United States Department of Justice, dated November 1, 1999, filed with the FCC in CC Docket No. 99-295 (“DOJ Evaluation”) at 18.

<sup>85</sup> For example, AT&T and other CLECs have pressed for an appropriate cutover interval performance measure since at least 1998 and continued to press their requests in 1999. See, e.g., Final Staff Report at 148-49 (reporting that MCI, WorldCom, TCG and AT&T requested cutover intervals measuring the completion of CHC hot cuts)[SWBT App. C at Tab 1233]; Comments of AT&T of the Southwest, Inc. on Texas Performance Measures Business Rules Version 1.6, dated Sept. 14, 1999, filed in TPUC Project No. 16251, at attached matrix pages 29-30 (requesting implementation of an on-time cutover interval measure similar to the ones adopted in California by Pacific Bell and in the SBC/Ameritech merger conditions)[SWBT App. C at Tab 1790].

SWBT consistently opposed adopting such a measure, deferring consideration of all such requests until the TPUC’s semi-annual review of performance measures scheduled for April 2000. See, e.g., Letter dated Sept. 17, 1999 from SWBT’s Mr. Horn to TPUC, filed in TPUC Project No. 16251, addressing CLECs comments on proposed performance measure business rule

the fact that SWBT was unable to complete CHC hot cuts within a reasonable time period. As Gwen Rowling of ICG Communications testified in October 1999 “[t]he coordinated conversion process involves both the CLEC and the ILEC operating in a timely and efficient manner. We’ve addressed this issue with SWBT repeatedly since June 1999, with SWBT itself acknowledging that it has problems performing hot cuts within a reasonable timeframe.”<sup>86</sup>

130. Despite CLECs’ requests and the evidence of SWBT’s prolonged hot cut provisioning, SWBT chose to address the issue only by adopting its performance measure 115 -- which measures the extent of any delay in starting a hot cut (in periods of 30, 60 and 120 minutes), not the length of time required to complete a hot cut. In late December, however, SWBT suddenly announced that it would adopt a cutover interval measure and proposed -- without review or comment by CLECs or evaluation by the TPUC in a public meeting -- a new measure, 114.1. (See Southwestern Bell Telephone Company’s Affidavit of William R. Dysart, sworn to Dec. 14, 1999 at ¶ G & Attachment 2 [Dysart Aff., Attach. K].) SWBT relies in its application on reported performance data under measure 115 and internal SWBT data supposedly collected under the guidelines of proposed measure 114.1 to proclaim that “[e]xisting data ... establish that SWBT consistently performs coordinated conversions of loops with number portability in a

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revisions and requests for on-time cutover interval measurement, attachment at 22 (“It is premature to establish new measurements at this time. The 6 month review is the appropriate time to discuss any new additions or deletions to the performance measurements”)[SWBT App. C at Tab 1803].

<sup>86</sup> Affidavit of Gwen M. Rowling On Behalf of ICG/CHOICECOM, sworn to Oct. 28, 1999, filed in TPUC Project No. 16251, at 8 [SWBT App. C at Tab 1918]. See also CLEC Operational Issues Matrix at 4, issue 8 (“CLECs are experiencing a large number of instances where SWBT is not prepared for these cuts. ... Doing a 4-5 line hot cut should take about an hour on average. We’ve had 5 line hot cut take all day (8 hours).”)[SWBT App. C at Tab 1779]

timely manner.” (SWBT Brief at 98.) In fact, as discussed below, just the opposite is true.

**a. SWBT’s reliance on its reported data for performance measure 115 is unreasonable.**

131. Because performance measure 115 captures only those hot cuts which are commenced after the authorized cut start time (in increments of 30, 60 and 120 minutes), and does not measure the amount of time required to complete a loop cutover from start to finish (i.e., from the time the CLEC calls the LOC to authorize the cut start to the time the LOC calls the CLEC to report the cutover completed), it ignores a potentially large number of prolonged cutovers. For example, if a SWBT technician commences a hot cut within 30 minutes of the authorized start time, but then takes 3 hours to complete the cut, the extended cutover interval will not be reflected on measure 115. Accordingly, performance measure 115 sheds little light on SWBT’s ability to timely complete a hot cut.

132. Moreover, it is readily apparent that SWBT’s aggregate reported performance data for measure 115 is completely untrustworthy. As discussed in more detail below (Section V.A.), AT&T and SWBT -- at the direction of the TPUC -- engaged in a joint reconciliation of SWBT’s reported data for AT&T under measure 115 (as well as measures 58 and 114) for the months of August and September 1999, which focused on SWBT’s reporting for UNE Loops with number portability (i.e., hot cuts).<sup>87</sup>

133. As a result of that reconciliation, SWBT acknowledged that its reported performance data materially understated its poor provisioning efforts. For

example, whereas SWBT had originally reported only 5 delayed cut starts for AT&T in August, the reconciled data showed 28 delayed starts -- an error of 560%. Similarly, whereas SWBT had originally reported only 1 delayed start in September, the reconciled data again showed 28 -- an error of 2,800%.<sup>88</sup>

134. Astonishingly, SWBT nevertheless contends that the AT&T/SWBT reconciliation “confirmed the accuracy of SWBT’s data.” (SWBT Brief at 99.) Moreover, Mr. Dysart and Ms. Conway contend that, even after incorporating the AT&T reconciled results into SWBT’s aggregated performance data, SWBT’s reported performance under measure 115 for all CLECs still demonstrates “parity” performance. (See Dysart Aff. ¶ 658; Conway Aff. ¶ 94.)

135. These claims are wholly misleading and rest on a demonstrably false premise. Thus, SWBT is able to claim “parity” performance under its measure 115 only by assuming that, despite the evidence uncovered in the AT&T/SWBT reconciliation project, its reported data for all other CLECs is 100% accurate. That assumption is completely untenable -- as Mr. Dysart and Ms. Conway well know.

136. Thus, as discussed in detail below (Section V.A.2.) the joint reconciliation project found that SWBT’s methods and procedures for collecting and reporting data under measure 115 (as well as measure 114<sup>89</sup>) were fundamentally flawed.

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<sup>87</sup> See Joint Affidavit of Rhonda Huser and Sarah DeYoung, sworn to Dec. 10 & 13, 1999, filed in TPUC Project No. 16251 (“Joint Reconciliation Affidavit”) at 4-6 [Attachment 22, hereto].

<sup>88</sup> Id. at 6.

<sup>89</sup> As discussed below, the joint reconciliation project also determined that SWBT’s procedures for collecting and reporting performance data for measure 58 were materially flawed, but for reasons different than those affecting measures 114 and 115.

In essence, the problem found was that SWBT's LOC -- responsible for collecting data on measures 114 and 115 -- failed to systematically log, among other things, the time of the CLECs' call to authorize the cutover. Accordingly, as the reconciliation project discovered, SWBT lacked any basis for calculating whether a cut began early (for measure 114) or late (for measure 115).

137. Moreover, the defects in SWBT's data collection process were not limited to AT&T's hot cuts -- but were endemic to all CLECs' hot cuts. Indeed, Mr. Dysart concedes that very point in his affidavit, stating:

"During this [August through October] timeframe, the required fields to determine the conversion interval were not required inputs. Therefore, the LOC technicians input both the start and stop times on a random basis."

(Dysart Aff. ¶ 653.)

138. Plainly, reported performance data based on a "random" collection process lacks any credibility. Moreover, Mr. Dysart provides some indication of the extent of the "randomness" affecting SWBT's data collection processes. Thus, according to figures Mr. Dysart provides in his affidavit, SWBT's LOC personnel logged the start and stop times of hot cuts on only 29%, 6% and 19% of all loops cutover in CHC hot cuts during August, September and October, respectively.<sup>90</sup> Assuming Mr. Dysart's figures

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<sup>90</sup> These percentages are easily derived from the numbers presented in Mr. Dysart's affidavit. For example, Mr. Dysart states that he examined the provisioning logs for all CHC hot cuts completed in September and that many of the logs failed to record the start and stop times on a hot cut. He next says that he reviewed a "sample" of the logs that did contain both a start and stop time. For September, the sample he examined consisted of 51 orders with 206 loops, which Mr. Dysart asserts constituted 90% of all orders in September where the provisioning logs recorded start and stop times. (See Dysart Aff. ¶ 653.) Based on Mr. Dysart's figures, it follows that there were a total of 57 orders with 229 loops in all of September for which there were stop and start times recorded in the provisioning logs. Compared to the total number of loop cutovers performed in CHC hot cuts in September -- i.e., 3,111 loops according to SWBT (see Conway Aff. ¶ 94) -- it follows that SWBT's LOC recorded the start and stop times on only 6% of all loop cutovers performed in CHC hot cuts in September.

are accurate, those numbers mean that on 71%, 94% and 81% of all the hot cuts performed in August, September and October, respectively, SWBT had no basis to calculate its compliance with -- or report data on -- measures 114 and 115.

139. In short, by its own admission, SWBT's performance measures 114 and 115 (and as discussed below, all the performance data SWBT presents on hot cuts) is completely unreliable and cannot possibly support SWBT's claim that it provisions CHC hot cuts on a timely basis.

**b. SWBT's "cutover interval" data demonstrates that SWBT is unable to complete CHC hot cuts on a timely basis.**

140. On its face -- and without even addressing the substantial errors affecting the data -- SWBT's evidence of on-time CHC cutovers demonstrates that SWBT cannot complete loop cutovers on a timely basis. Thus, the data reported by Mr. Dysart -- and the conclusions he purports to draw -- are as follows:

Percentage of CHC Hot Cuts Timely Completed<sup>91</sup>

	<u>&lt;60 min.</u>	<u>&lt;120 min.</u>	<u>Total Loop Cuts</u>
August	82%	94%	3,111
September	92%	100%	4,134
October	87%	100%	2,980

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<sup>91</sup> The figures for on-time cutover are drawn directly from Mr. Dysart's affidavit at ¶ 655. The figures for total volume of loops cutover in CHC hot cut is drawn directly from Ms. Conway's affidavit at ¶ 94. Of course, Mr. Dysart performed his analysis using only a "sample" of the total number of loop cutovers -- a sample consisting of only 456 loops, 206 loops and 398 loops in August, September and October, respectively. (Dysart Aff. ¶ 653.) As discussed below, the extremely limited number of loops Mr. Dysart employed in his sample -- and the manner in which the sample was obtained -- casts substantial doubt over Mr. Dysart's attempt to extrapolate his sampling results to the total universe of loop cutovers performed.

141. Even assuming these figures are accurate, SWBT's own numbers show that, for the 3 month period SWBT is relying upon to support its application, SWBT failed to satisfy the Commission's 90% on-time cutover rate for 2 out of the 3 months. Moreover, unlike Bell Atlantic, SWBT's figures show that its performance declined in the face of falling volumes.

142. Despite the clear import of its own data, SWBT nevertheless contends that its figures show timely provisioning. First, SWBT contends that its "average" on-time result was much higher, amounting to 92% to 100% of all loops in an order being cutover "on average" within one hour. (Dysart Aff. ¶ 655.)

143. SWBT's "average" on-time cutover figure, however, is wholly misleading and serves to mask discriminatory performance. A simple example illustrates both how SWBT calculates its "average" and why that figure is inappropriate. Assume that a customer places one order requiring 8 loops to be cutover and that 4 loops are cutover in half an hour and the remaining 4 loops are cutover in one and a half hours. The actual performance would show that the entire order was completed in over an hour and that, at a minimum, 50% of the order was not completed until after an hour. Under SWBT's "average" approach, however, SWBT would report that 100% of the hot cuts were completed within one hour.

144. While mathematically correct, SWBT's calculation is competitively harmful. While 50% of a customer's lines might be timely installed -- the other 50% would be untimely and, worse still, the customer would likely perceive the

entire order as having being delivered late<sup>92</sup> -- with the consequent loss of goodwill between the CLEC and its new customer and the damage to the CLECs' general reputation and competitive standing. Notably, as shown by its proposed measure 114.1, not even SWBT suggests that its "average" on-time loop cutover analysis is an appropriate tool to assess whether SWBT can perform hot cuts on a timely basis.<sup>93</sup>

145. Second, SWBT contends that its performance should be measured under a 2 hour -- not a 1 hour -- window and points for support to both the DOJ Evaluation of Bell Atlantic's application and its own proposed measure 114.1. (Dysart Aff. ¶¶ 656, 659.)

146. SWBT's position is not credible. First, the DOJ Evaluation does not state -- contrary to Mr. Dysart's assertion -- that a two hour cutover period is appropriate to support CLECs' competitive entry into the local service market. And the Commission, in evaluating Bell Atlantic's application, relied on the cutover interval measure approved by the New York State Public Service Commission, which provided for a one hour window for hot cuts involving 9 or less loops. See Bell Atlantic ¶ 292. Under the Bell Atlantic measure, SWBT's reported data on its coordinated hot cut

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<sup>92</sup> Notably, SWBT's attempt to use an "average" loop cutover analysis is similar to its argument, made in the context of the PPIG task force, that service outages should be measured on an individual loop basis. As discussed above, that approach ignores the impact of defective (or untimely) provisioning on the CLECs' customers, who, as a general rule, focus on whether their complete orders -- not simply pieces of it -- were properly and timely delivered.

<sup>93</sup> In its proposed measure 114.1, SWBT contends that performance should be analyzed on a percentage basis by comparing the number of hot cuts timely completed to the total number of hot cuts performed. Although SWBT's measure is noticeably vague as to whether "hot cuts" refers to an individual loop or a total order, at a minimum, SWBT has not sought to use an "average" loop approach to measuring its performance.

completions -- which, as Mr. Dysart concedes, involved an average of 3.8 to 4.04 loops per order (Dysart Aff. ¶ 653) -- plainly fails to show timely provisioning.

147. Second, SWBT's reliance on its proposed measure 114.1 is misplaced. As the Commission has stated, performance measurements adopted by a state commission after a "rigorous collaborative proceeding" with "the ongoing participation of affected competitors and the BOC" offer far "more persuasive evidence of commercial reasonableness than a standard unilaterally adopted by the BOC." Bell Atlantic ¶¶ 55-56, 86 n.210. Of course, in this case, SWBT proposed its measure on the eve of its application, without any "collaborative" participation by CLECs or any public review by the TPUC.

148. Not surprisingly, there is substantial evidence to show that SWBT's proposed measure does not "reflect what competitors in the marketplace feel they need in order to have a meaningful opportunity to compete." Id. 55. First, as the Commission has observed, a properly executed hot cut "will last no more than five minutes", id. ¶ 295 n.925, and Ms. Conway concedes that, when pre-installation test procedures are properly performed, the hot cut itself should take a "2-second interval". (Conway Aff. ¶ 87.) Despite the extremely limited time a hot cut requires, the CHC hot cut process already affords SWBT a full one-hour interval to complete the cutover.

149. SWBT's suggestion that it should be entitled to an additional full hour simply invites inefficiency and, worse still, imposes an unjustified burden on CLECs' ability to market their services -- and thus impedes their ability to compete. As discussed above, the target market for AT&T's switch-based local service is primarily small businesses, many of whom are in the consumer service industry and thus depend extensively on their phone service to remain in contact with their customers. It is

difficult enough to persuade these customers to part with their long-time service provider and even more problematic to convince them that the change is worth the inconvenience and disruption to their businesses of losing phone service for 1 hour.

150. If the service outage increased to 2 hours, there is little doubt that many potential customers would balk at the offer. To illustrate the difficulties posed by a 2 hour service outage, consider the needs of a typical restaurant: it must prepare for three shifts of diners every day and thus be available to take reservations throughout the day (and particularly near each seating), respond to calls for food delivery and maintain contact with suppliers. In that tightly compressed schedule, there may still be room to squeeze a 1 hour phone service interruption -- but 2 hours is likely asking too much.

151. Moreover, the problems facing restaurants are not unique. Most small businesses dread losing contact with their customers for any length of time. To have to persuade them to close for 25% of their regular business hours imposes a substantial burden on CLECs' marketing efforts. That burden is particularly egregious because it lacks any technical or operational justification on SWBT's part.

152. Indeed, it is clear that the TPUC's Staff did not believe that SWBT required more than a one-hour installation period. Thus, in its November 1999 evaluation of SWBT's reported performance data, the Staff noted that SWBT's current set of performance measures failed to assess SWBT's on-time hot cut interval performance. Accordingly, the Staff proposed that a provisional measure be adopted

(pending the TPUC's six month performance measure review) which would penalize SWBT for "provisioning extending beyond one hour."<sup>94</sup>

153. Furthermore, it is evident from performance measures adopted in other state regulatory proceedings that SWBT's proposed 2 hour interval is inappropriate. Thus, not only did New York adopt a one-hour on-time cutover interval, but SWBT's affiliate BOC, Pacific Bell, agreed to a similar one-hour cutover measure in California.<sup>95</sup> In addition, SWBT's parent, SBC, agreed as one of the conditions to the SBC/Ameritech merger, to include within the set of performance measures adopted for California and Nevada, a one-hour on-time cutover interval for coordinated hot cuts.<sup>96</sup>

154. In sum, as the evidence above shows, a one-hour cutover interval is the appropriate measure for judging SWBT's performance and SWBT's own data shows that it has failed -- in 2 out of the 3 months it relies upon -- to meet the 90% benchmark that the Commission has determined is "minimally acceptable" to show checklist compliance.

155. Additional problems with SWBT's business rules for its proposed measure serve to materially overstate the timeliness of its performance. The most

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<sup>94</sup> See Evaluation of SWBT Performance Measure Data by Staff of Public Utility Commission of Texas, dated November 2, 1999, filed in TPUC Project No. 16251 ("TPUC Staff Evaluation"), at 3 [SWBT App. C at Tab 1942]. At a subsequent TPUC hearing, the TPUC Staff repeatedly explained that their proposal contemplated a one-hour loop cutover interval. See Statements of TPUC Staff Mr. Srinivasa and Judge Farroba, Nov. 4, 1999 TPUC Open Meeting Tr. at 107, 109-12, 119-20 [Attachment 23, hereto].

<sup>95</sup> See Performance Measure 9, California OSS II Performance Measurements, Joint Partial Settlement Agreement, Appendix B, dated Sept. 7, 1999 ("On time' means within one hour of committed order due time."), attached hereto as Attachment 24.

<sup>96</sup> See In re Applications of Ameritech Corp. and SBC Communications Inc., CC Docket 98-141, Memorandum Opinion and Order, FCC 99-279 (rel. Oct. 8, 1999) ("SBC/Ameritech Merger Order") at Appendix C, Attachment A at A-106 (Measurement 16).

obvious evidence of that overstatement is the tortured definition SWBT has employed to measure the cutover interval. SWBT starts its cutover interval when the CLEC calls the LOC to authorize the cut and ends the period when SWBT's frame technician calls the LOC to report the cut completed. (See Dysart ¶ 654.) SWBT's measure thereby excludes the last step in the cutover process -- i.e., the LOC's call to the CLEC to notify it that the cut has been completed -- and thus ignores the risk of substantial delay before the CLEC knows to activate the NPAC and place its customer in service.<sup>97</sup>

156. Plainly, SWBT's truncated cutover interval fails to provide a competitively sensitive measure of SWBT's ability to complete hot cuts on a timely basis. Indeed, Mr. Dysart has conceded before the TPUC that an appropriate cutover measure "would measure the start time to the completion."<sup>98</sup> Similarly, other regulatory agencies that have adopted an on-time cutover measure for coordinated hot cuts have required that the cutover period extend through the BOC's notice to the CLEC that the cut is complete.<sup>99</sup>

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<sup>97</sup> Notably, it is during this very period that a CLEC's customer is likely to experience the greatest frustration in service delivery. Thus, if the cutover is completed but the NPAC is not activated -- because the LOC has not timely called the CLEC -- the CLEC's customer will be able to make calls, but not receive them. As Ms. Conway observes, CLECs "must complete their portion of the cutover migration to ensure the customer does not experience disruption of service" (Conway Aff. ¶ 92) -- a task the CLECs cannot perform if the LOC fails to call. Not surprisingly, customers tend to blame their new service provider when service is only partially delivered.

<sup>98</sup> Statement of SWBT's Mr. Dysart, Nov. 4, 1999 TPUC Open Meeting at 109 [Attachment 23].

<sup>99</sup> See, e.g., New York State Carrier-to-Carrier Guidelines Performance Standards and Reports, dated Nov. 15, 1999, filed in NY PSC Case 97-C-0139 at PR-9 (defining hot cut completion as the time when BA-NY "notifies the CLEC by telephone" or "attempts to notify the CLEC by telephone but receives no answer and leaves a phone message"), attached hereto as Attachment 25.

157. Apart from employing the wrong measurement interval, SWBT's cutover interval data raise a host of other, disturbing issues that caution against relying on SWBT's figures. Thus, the fact that the data SWBT presents was neither reconciled nor independently reviewed raises grave concerns about its integrity. Underscoring that concern is the fact that the data was not collected in a systematic fashion, but rather in a "random" manner which suggests that no premium was placed on ensuring the accuracy of the log notes. Indeed, as discussed below (see Section V.C.), Telcordia's limited review of SWBT's performance measure data showed substantial disparities between SWBT's log notes and those of the CLEC test participant with respect to the start and stop times on loop hot cuts -- the very times Mr. Dysart asks the Commission to rely upon.

158. Finally, apart from the questions about the accuracy of the data, further doubts are raised by Mr. Dysart's attempt to extrapolate broad conclusions about SWBT's aggregate performance based on the extremely limited sampling he conducted. To note just one concern among many,<sup>100</sup> Mr. Dysart contends that his sampled data was collected on a "random" basis and thus is "representative of all coordinated conversions." (See Dysart ¶ 653.) Mr. Dysart, however, presents no evidence that his sample was truly random and indeed, given the limited number of orders sampled and the fact that some LOC technicians may have made log notes while others did not, it is entirely possible that the data Mr. Dysart sampled was created by select LOC staff possibly working with

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<sup>100</sup> For example, I also find dubious Mr. Dysart's attempt to apply the same figures he found in his sampled group to SWBT's performance for all CLECs without having calculated (or reported) the standard deviation of his sampled results. Indeed, Mr. Dysart appears to have simply ignored the tools (and constraints) of statistical modeling in presenting his argument.

discrete CLECs -- which would make for a totally non-randomized (and thus non-  
“representative”) sampling.

159. In sum, the evidence shows that, with respect to all three measures identified in Bell Atlantic, SWBT’s performance has failed even to reach -- let alone exceed -- the “minimally acceptable” level set by the Commission. Thus, the evidence shows:

- up to 11.4% of AT&T’s customers -- and likely all other CLECs’ customers -- suffer unexpected and prolonged loss of service due to SWBT’s provisioning errors;
- up to 4.8% of the UNE loops that SWBT provisions for all CLECs experience trouble within at least the first 30 days of installation and, most likely, substantially sooner; and
- up to 18% of the CHC hot cuts SWBT performs (and potentially a far greater percentage) are not installed within one hour.

160. SWBT’s failure to pass not just one, but all three of these critical measures provides clear evidence that CLECs’ customers are not receiving the service they expect -- and to which they are entitled -- upon switching local service providers. Necessarily, the impact of SWBT’s inadequate provisioning is being felt directly by CLECs and denying them a meaningful opportunity to compete.

#### **IV. SWBT’S OSS SYSTEMS FAIL TO PROVIDE NON-DISCRIMINATORY ACCESS TO ORDER STATUS AND BILLING FUNCTIONS**

161. As noted above, the Commission recently reiterated in Bell Atlantic its long-standing rule that Section 271 requires a BOC to show that “competing carriers ... have nondiscriminatory access to the various functions of [the BOC’s] OSS in order to obtain unbundled loops in a timely and efficient manner.” Bell Atlantic ¶ 270.

162. SWBT’s present application fails, however, to show that SWBT has met that standard. Moreover, as the commercial experience of AT&T and other